



August 25, 2000

Sergeant Martin Birkenfeld
Amarillo Police Department
200 SE 3rd
Amarillo, Texas 79101-1514

OR2000-3254

Dear Sergeant Birkenfeld:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 138337.

The Amarillo Police Department (the "department") received a request for all of its records regarding a specified individual, including records relating to a particular incident in which that individual was involved. You have submitted the police reports that the department deems to be responsive to the request for information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

You claim that case report No. 1997-00102310 contains information about a juvenile offender that is confidential under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory or by judicial decision." Gov't Code § 552.101. Thus, section 552.101 protects information that is made confidential by another statute. Statutory confidentiality under section 552.101 requires explicit language that makes certain information confidential or provides that it shall not be released to the public. *See Open Records Decision No. 478 at 2 (1987)*. With regard to juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, section 58.007 of the Family Code provides in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). We agree that the report in case No. 1997-00102310 represents a juvenile law enforcement record relating to conduct that occurred on or after September 1, 1997. As none of the exceptions in section 58.007 appears to be applicable to that report, it is confidential under section 552.101 in conjunction with section 58.007(c) of the Family Code. Therefore, the department must withhold that report, in its entirety, from public disclosure.

Section 552.101 also excepts from disclosure information that is protected by the common law right of privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a governmental body compiles or summarizes criminal history information pertaining to a particular individual, the compiled or summarized information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Thus, when a requestor asks for all records concerning a certain individual, section 552.101 requires a law enforcement agency to withhold responsive information that treats that individual as a suspect, arrestee, or defendant, because that individual's common law right of privacy has been implicated. *Id.*; *see also* Open Records Decision No. 616 at 2-3 (1993). We have marked the submitted case reports that are confidential under section 552.101 in conjunction with the common law right of privacy. Those reports also must be withheld in their entireties.

You also seek to withhold several of the submitted case reports under section 552.108 of the Government Code. Section 552.108, the "law enforcement exception," provides in relevant part that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an

exception to public disclosure under section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You represent to this office that case report No. 1997-00022093 pertains to a case that remains under investigation and that release of the report could interfere with investigation or prosecution. Based on your representations and our review of the information in question, we conclude that the report is excepted from disclosure under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978).

Section 552.108 also excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) protects law enforcement records that pertain to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. *See* Open Records Decision No. 616 (1993) (construing statutory predecessor). You represent to us that case report Nos. 1993-00001380, 1993-00111068, 1996-00115184, and 1997-00064109 deal with investigations that did not result in a conviction or an adjudication against any person. You inform us that these reports relate to cases in which the complainant did not press charges (Nos. 1993-00001380 and 1993-00111068), there is no evidence that a crime occurred (No. 1996-00115184), or the prosecutor declined to file charges (No. 1997-00064109).¹ Based on your representations and our review of those four reports, we conclude that they are excepted from disclosure under section 552.108(a)(2).

We note, however, that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest report information held to be public in *Houston Chronicle*. Section 552.108(c) requires the department to release basic front-page information, including a detailed description of the offense, even if that information does not literally appear on the front page of the corresponding police report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). Thus, section 552.108(c) requires the release of front-page information with respect to case report nos. 1997-00022093, 1993-00001380, 1993-00111068, 1996-00115184, and 1997-00064109. The other contents of those five reports are excepted from disclosure under section 552.108.

¹We note that two of the summary paragraphs in your comments refer to “Case report number 1996-114645.” This ruling assumes that, in the second instance, you intended to refer to case report no. 1997-00064109, as there is no reference to that report anywhere else in your comments.

In summary, case report no. 1997-00022093 is excepted from disclosure under section 552.108(a)(1) of the Government Code, and case report nos. 1993-00001380, 1993-00111068, 1996-00115184, and 1997-00064109 are excepted from disclosure under section 552.108(a)(2). However, the department must release basic information regarding the case reports that are excepted from disclosure under section 552.108. Case report no. 1997-00102310 is confidential under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code and must be withheld in its entirety. The other case reports are excepted from disclosure under section 552.101 in conjunction with common law privacy, and those reports also must be withheld in their entireties.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

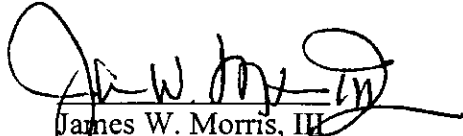
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 138337

Encl. Submitted documents

cc: Ms. Linda G. Welch, Esq.
Linda G. Welch & Associates
5334 Western Avenue
Knoxville, Tennessee
(w/o enclosures)